

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10158 MLW

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2004 JUN 14 PM 5:56  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

ROBERT OLAFSON and	)
PATRICIA OLAFSON,	)
Plaintiffs	)
	)
v.	)
	)
KYLE E. BYRNE, an Entity identified	)
In part as BFI, and	)
MARGARET HAMILL	)
Defendants	)

**ANSWER WITH JURY CLAIM OF THE DEFENDANT MARGARET HAMILL TO  
PLAINTIFFS' FIRST AMENDED COMPLAINT**

**INTRODUCTORY STATEMENT**

The defendant Margaret Hamill can neither admit nor deny the averments contained in the Introductory Statement: to the extent this paragraph contains any allegation against the defendant, the same are denied.

**PARTIES**

1. The defendant Margaret Hamill can neither admit nor deny the averments contained in paragraph 1 of the plaintiffs' complaint.
2. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.
3. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

4. The defendant Margaret Hamill admits the averments contained in paragraph 4 of the plaintiffs' complaint.

#### JURISDICTION AND VENUE

5. The defendant Margaret Hamill states that this paragraph contains statements of law for which she is not required to respond. This defendant denies all factual averments contained in paragraph 5 of the plaintiffs' complaint.

#### FACUTAL BACKGROUND

6. The defendant Margaret Hamill can neither admit nor deny the allegations contained in paragraph 6 of the plaintiffs' complaint.
7. The defendant Margaret Hamill can neither admit nor deny the allegations contained in paragraph 6 of the plaintiffs' complaint
8. The defendant Margaret Hamill denies the averments contained in paragraph 8 of the plaintiffs' complaint.
9. The defendant Margaret Hamill can neither admit nor deny the averments contained in paragraph 9 of the plaintiffs' complaint.
10. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied..

11. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

12. The defendant Margaret Hamill denies the averments contained in paragraph 12 of the plaintiffs' complaint.

13. The defendant Margaret Hamill denies the averments contained in paragraph 13 of the plaintiffs' complaint.

14. The defendant Margaret Hamill denies the averments contained in paragraph 14 of the plaintiffs' complaint.

COUNT I  
ROBERT OLAFSON v. KYLE E. BYRNE  
Negligence

15. The defendant Margaret Hamill affirms, re-alleges and incorporates herein its responses to paragraphs 1-14 of this complaint.

16. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

17. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

WHEREFORE, the defendant Margaret Hamill prays this court dismiss the plaintiffs' complaint and enter judgment for the defendant Margaret Hamill, which includes an award of costs to the defendant, Margaret Hamill.

COUNT II  
ROBERT OLAFSON v. BFI  
Agency/Respondent Superior

18. The defendant Margaret Hamill affirms, re-alleges and incorporates herein its responses to paragraphs 1-17 of this complaint.

19. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

20. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

WHEREFORE, the defendant Margaret Hamill prays this court dismiss the plaintiffs' complaint and enter judgment for the defendant Margaret Hamill, which includes an award of costs to the defendant, Margaret Hamill.

COUNT III  
PATRICIA OLAFSON v. KYLE E. BYRNE  
(Negligence)

21. The defendant Margaret Hamill affirms, re-alleges and incorporates herein its responses to paragraphs 1-20 of this complaint.

22. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

23. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

WHEREFORE, the defendant Margaret Hamill prays this court dismiss the plaintiffs' complaint and enter judgment for the defendant Margaret Hamill, which includes an award of costs to the defendant, Margaret Hamill.

COUNT IV  
PATRICIA OLAFSON v. BFI  
Agency/Respondent Superior

24. The defendant Margaret Hamill affirms, re-alleges and incorporates herein its responses to paragraphs 1-23 of this complaint.

25. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

26. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

WHEREFORE, the defendant Margaret Hamill prays this court dismiss the plaintiffs' complaint and enter judgment for the defendant Margaret Hamill, which includes an award of costs to the defendant, Margaret Hamill.

COUNT V  
ROBERT OLAFSON v. MARGARET HAMILL  
Negligence

27. The defendant Margaret Hamill affirms, re-alleges and incorporates herein its responses to paragraphs 1-26 of this complaint.

28. The defendant Margaret Hamill denies the averments contained in paragraph 28 of the plaintiffs' complaint.

29. The defendant Margaret Hamill denies the averments contained in paragraph 29 of the plaintiffs' complaint.

WHEREFORE, the defendant Margaret Hamill prays this court dismiss the plaintiffs' complaint and enter judgment for the defendant Margaret Hamill, which includes an award of costs to the defendant, Margaret Hamill.

COUNT VI  
PATRICIA OLAFSON v. MARGARET HAMILL  
Negligence

30. The defendant Margaret Hamill affirms, re-alleges and incorporates herein its responses to paragraphs 1-29 of this complaint.

31. The defendant Margaret Hamill denies the averments contained in paragraph 31 of the plaintiffs' complaint.

32. The defendant Margaret Hamill denies the averments contained in paragraph 32 of the plaintiffs' complaint.

WHEREFORE, the defendant Margaret Hamill prays this court dismiss the plaintiffs' complaint and enter judgment for the defendant Margaret Hamill, which includes an award of costs to the defendant, Margaret Hamill.

COUNT VII  
ROBERT OLAFSON v. KYLE E. BYRNE  
Consortium

33. The defendant Margaret Hamill affirms, re-alleges and incorporates herein its responses to paragraphs 1-32 of this complaint.

34. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

35. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

WHEREFORE, the defendant Margaret Hamill prays this court dismiss the plaintiffs' complaint and enter judgment for the defendant Margaret Hamill, which includes an award of costs to the defendant, Margaret Hamill.

COUNT VIII  
ROBERT OLAFSON v. BFI  
Consortium

36. The defendant Margaret Hamill affirms, re-alleges and incorporates herein its responses to paragraphs 1-35 of this complaint.

37. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

38. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.



WHEREFORE, the defendant Margaret Hamill prays this court dismiss the plaintiffs' complaint and enter judgment for the defendant Margaret Hamill, which includes an award of costs to the defendant, Margaret Hamill.

COUNT IX  
ROBERT OLAFSON v. MARGARET HAMILL  
Consortium

39. The defendant Margaret Hamill affirms, re-alleges and incorporates herein its responses to paragraphs 1-38 of this complaint.

40. The defendant Margaret Hamill can neither admit nor deny the averments contained in paragraph 40 of the plaintiffs' complaint.

41. The defendant Margaret Hamill denies the averments contained in paragraph 40 of the plaintiffs' complaint.

WHEREFORE, the defendant Margaret Hamill prays this court dismiss the plaintiffs' complaint and enter judgment for the defendant Margaret Hamill, which includes an award of costs to the defendant, Margaret Hamill.

COUNT X  
PATRICIA OLAFSON v. KYLE E. BYRNES  
Consortium

42. The defendant Margaret Hamill affirms, re-alleges and incorporates herein its responses to paragraphs 1-41 of this complaint.

43. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

44. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

WHEREFORE, the defendant Margaret Hamill prays this court dismiss the plaintiffs' complaint and enter judgment for the defendant Margaret Hamill, which includes an award of costs to the defendant, Margaret Hamill.

COUNT XI  
PATRICIA OLAFSON v. BFI  
Consortium

45. The defendant Margaret Hamill affirms, re-alleges and incorporates herein its responses to paragraphs 1-44 of this complaint.

46. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

47. The allegations contained in this paragraph do not apply to this defendant and therefore this defendant is not required to answer. In the event that any allegation does apply to this defendant, they are hereby denied.

WHEREFORE, the defendant Margaret Hamill prays this court dismiss the plaintiffs' complaint and enter judgment for the defendant Margaret Hamill, which includes an award of costs to the defendant, Margaret Hamill.

COUNT XII  
PATRICIA OLAFSON v. MARGARET HAMILL  
Consortium

48. The defendant affirms, re-alleges and incorporates herein its responses to paragraphs 1-47 of this complaint.

49. The defendant Margaret Hamill can neither admit nor deny the averments contained in paragraph 49 of the plaintiffs' complaint.

50. The defendant Margaret Hamill denies the averments contained in paragraph 50 of the plaintiffs' complaint.

WHEREFORE, the defendant Margaret Hamill prays this court dismiss the plaintiffs' complaint and enter judgment for the defendant Margaret Hamill, which includes an award of costs to the defendant, Margaret Hamill.

**AFFIRMATIVE DEFENSES**

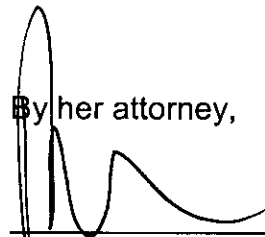
1. The complaint fails to state a claim against this defendant for which relief can be granted.

2. Defendant Margaret Hamill says that the injuries or damages alleged were caused in whole or in part by the plaintiffs' own negligence, or the negligence of the person in whose care and custody the plaintiffs were at the time of the accident alleged in plaintiffs' complaint.
3. The defendant Margaret Hamill says that the acts or omissions alleged in plaintiffs' complaint to be negligent were committed, if at all, by a person or persons for whose conduct the defendant Margaret Hamill was not legally responsible.
4. Defendant Margaret Hamill says that the injuries or damages alleged were caused in whole or in part by the conduct of the plaintiff and/or the plaintiffs' agents, servants or employees, which conduct violated the various laws, statutes, ordinances and regulations governing the conduct of the parties at the time said injuries or damages were sustained.
5. In the event the defendant Margaret Hamill is found negligent, which the defendant Margaret Hamill denies, then the defendant Margaret Hamill says that the plaintiffs were comparatively negligent and that said negligence was greater than that of the defendant Margaret Hamill, barring plaintiffs' recovery.
6. The defendant Margaret Hamill claims exemptions from tort liability under M.G.L. c 90, §34M.
7. The defendant Margaret Hamill says that the plaintiffs are not entitled to maintain this action under the provisions of M.G.L. c231, §6D.

8. The defendant Margaret Hamill says that if it shall appear at the trial of this matter that the plaintiffs sustained injuries and/or damages as alleged in the complaint, then said injuries and/or damages were the result of the negligence of the plaintiffs, which was the cause or a contributing cause of said injuries and/or damages.
9. The defendant Margaret Hamill says that there has been an insufficiency of process.
10. The defendant Margaret Hamill says that there has been an insufficiency of service of process.
11. The defendant Margaret Hamill says that the plaintiffs have not commenced this action within the time allowed by statute for the commencement of such actions.
12. The defendant Margaret Hamill denies each and every paragraph, averment, item and matter set forth in plaintiffs' complaint, which has not been specifically admitted.
13. The defendant Margaret Hamill states that the plaintiffs' claim has failed to reach the jurisdictional limit for diversity cases.

THE DEFENDANT, MARGARET HAMILL DEMANDS A TRIAL BY JURY ON ALL ISSUES.

Dated: 6/3/04

By her attorney,  
  
\_\_\_\_\_  
Bruce R. Fox, Esquire  
BBO#: 176320  
LAW OFFICES OF BRUCE R. FOX  
27B Midstate Office Park  
Auburn, MA 01501  
Telephone: (866) 290-7435

CERTIFICATE OF SERVICE

I, Bruce R. Fox, attorney for the above named defendant Margaret Hamill, do hereby certify that I caused a copy of the within **ANSWER WITH JURY CLAIM OF THE DEFENDANT MARGARET HAMILL TO PLAINTIFFS' AMENDED COMPLAINT**, to be served upon each named party by mailing a copy of same, postage prepaid, to each party's counsel of record, namely:

John C. Ottenberg, Esquire  
Ottenberg & Dunkless, LLP  
101 Arch Street  
Boston, MA 02110

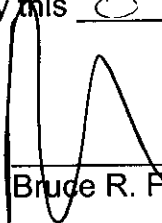
Yvette Conception  
BFI Waste Services of Massachusetts, LLC  
101 Federal Street  
Boston, MA 02108

Kyle E. Byrne  
90 Massosoit Avenue  
Oak Bluffs, MA 02557

Signed under the pains and penalties of perjury this

8 day of June

2004.

  
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Bruce R. Fox, Esquire